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NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

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In the matter of:

HELMUT WEBER (d/b/a Weber Capital
Management) and VERA WEBER, husband
and wife

Respondents.

DOCKET NO. S-20623A-08-0477

**TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING**

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY

EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondent HELMUT WEBER is engaging in or is about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act") and that the public welfare requires immediate action.

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

Arizona Corporation Commission
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II.

RESPONDENTS

2. HELMUT WEBER (d/b/a Weber Capital Management) (hereinafter, "WEBER") is an individual residing in Maricopa County, Arizona.

3. VERA WEBER has been at all relevant times the spouse of WEBER and may be referred to as "Respondent Spouse." Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

4. At all relevant times, WEBER and Respondent Spouse have been acting for their own benefit and for the benefit or in furtherance of WEBER and Respondent Spouse's marital community.

5. WEBER may be referred to as "Respondent."

III.

FACTS

6. In or around August 2008, Respondent offered at least one investor residing in Arizona an unregistered security in the form of a commodity investment contract and/or an investment contract related to trading in foreign currency exchange investments ("FOREX INVESTMENT").

7. The Respondent told the investor that the funds would be used in foreign exchange trading. The investor would not participate in the selection of the foreign currency trades.

8. Respondent also publicly solicits to potential investors his FOREX INVESTMENT through his websites, www.weberfx.com and www.webercapitalmanagment.com. WWW.webercapitalmanagement.com states that managed trading accounts are an option for an investor because "[l]earning to trade yourself with all the emotion and fears is an expensive and time consuming task."

9. WWW.weberfx.com includes representations of potential returns of 3-5% per month and testimonials, including but not limited to,

1 "I just wanted you to know what kind of extraordinary service you are providing.
2 Attention to detail and full transparency is fantastic. I am very pleased with all of
3 the performance achieved. Keep up your good work. Mary E. Arizona, USA" and
4 "I have been trading Forex for 3 years now. I have never seen anything like your
5 performance. It's going great – what a relaxing and profitable way to trade! Jim K.
6 Australia."

7 10. According to www.weberfx.com, \$25,000.00 is the minimum amount for an
8 investment.

9 11. From in or around December 2005 to the present, Respondent offered and sold at
10 least \$175,000.00 in his FOREX INVESTMENT to at least 5 investors, all of which reside in
11 Arizona.

12 12. Respondent told at least one investor the monies would be pooled into one account,
13 Respondent would select which currency pairs to trade, and the returns would be dependent upon
14 those trade selections. The investors would not participate in the selection of which currency pairs to
15 trade.

16 13. Respondent provided to at least one investor a spreadsheet depicting trade results for
17 the month of November 2005 that showed a purported total gain of \$16,670.00 on an investment of
18 \$10,000.00. The investor believed the gain was a return based on actual trading. After investing,
19 the investor learned from the Respondent that the November 2005 trading gain was from
20 Respondent's practice trading.

21 14. Respondent provided to at least one investor offering documents that compare the
22 returns by The Sentiment Fund, a company described by the Respondent as offering foreign
23 exchange market opportunities to smaller investors, to the returns generated by Weber Capital
24 Management. Respondent stated Weber Capital Management returned 28.00% in 2006 to date as
25 compared to The Sentiment Fund, which returned to investors 15.88% in 2003, 22.64% in 2004,
26 27.00% in 2007, and 5.00% in 2006 to date.

1 15. Respondent provided offering documents to at least one investor that state nine
2 separate advantages to investing in the foreign exchange market, including but not limited to, an
3 “Ability to Profit in Rising or Declining Markets, Reduce Risk while enhancing returns, strong
4 recognizable trends, and Always a Trading Opportunity – Profit Potential in Rising and Falling FX
5 Markets.”

6 16. Respondent failed to disclose to at least one investor the fees and expenses of the
7 trades.

8 17. Respondent provided spreadsheets to at least one investor representing the
9 investment and its purported growth.

10 18. Respondent represented to at least one investor that investor funds would be
11 returned on request. When the investor asked for the return of their money, the Respondent failed
12 to return the monies as promised, stated the investor funds were lost, and stopped contact with the
13 investor.

14 19. Respondent represented to at least one investor in the account application form that
15 100% of the funds would be used for trading in the FOREX INVESTMENT and not for any other
16 purpose.

17 20. Respondent represented to at least one investor that the investor funds were secured
18 and guaranteed to make money but failed to state how the investor funds were secured and
19 guaranteed to make money. The FOREX INVESTMENT was not secured or guaranteed because
20 the invested funds were not returned to the investor.

21 21. Respondent stated in his offering documents that he earns his commission through
22 the profits made on the trading. Respondent stated he is entitled to deduct a 25% commission from
23 all profits in excess of the initial investment. Additionally, Respondent is entitled to a bonus
24 commission between 15.00% to 30.00% depending upon whether the investment nets a 50.00% to
25 150.00% gain in a calendar year.

26

22. Respondent did not ask at least one investor whether that investor could afford to lose all or a large portion of the investment.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer and Sale of Unregistered Securities)

23. From in and around December 2005 to the present, Respondent has been offering and selling unregistered securities in the form of a commodity investment contract and/or an investment contract related to trading in foreign currency exchange investments ("FOREX INVESTMENT") within or from Arizona.

24. The securities referred to above are not registered pursuant to Articles 6 or 7 of the Securities Act.

25. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

26. Respondent is offering or selling securities in the form of a commodity investment contract and/or an investment contract related to trading in foreign currency exchange investments ("FOREX INVESTMENT") within or from Arizona while not registered as a dealer or salesmen pursuant to Article 9 of the Securities Act.

27. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

28. In connection with the offer or sale of securities within or from Arizona, Respondent is, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii) making untrue statements of material fact or omitting to state material facts that are necessary in order to make the

1 statements made not misleading in light of the circumstances under which they are made; or (iii)
2 engaging in transactions, practices, or courses of business that operate or would operate as a fraud or
3 deceit upon offerees and investors. Respondent's conduct includes, but is not limited to, the
4 following:

5 a) Providing information regarding potential positive returns to investors, but
6 failing to disclose to at least one investor and/or offeree the risks associated with their investment
7 including, but not limited to, the possibility that he/she may lose all or a large portion of their
8 investment;

9 b) Failing to disclose to at least one investor and/or offeree the fees and
10 expenses of his trades;

11 c) Misrepresenting to at least one investor that purported returns were returns
12 based on actual trading rather than practice trading;

13 d) Misrepresenting to at least one investor that investor funds were secured; and

14 e) Misrepresenting to at least one investor the returns were guaranteed when
15 funds were lost.

16 29. This conduct violates A.R.S. § 44-1991.

17 **VII.**

18 **TEMPORARY ORDER**

19 **Cease and Desist from Violating the Securities Act**

20 THEREFORE, based on the above allegations, and because the Commission has determined
21 that the public welfare requires immediate action,

22 IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that respondent,
23 their agents, servants, employees, successors, assigns, and those persons in active concert or
24 participation with the Respondent CEASE AND DESIST from any violations of the Securities Act.

25 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in
26 effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

1 IT IS FURTHER ORDERED that this Order shall be effective immediately.

2 **VIII.**

3 **REQUESTED RELIEF**

4 The Division requests that the Commission grant the following relief:

- 5 1. Order Respondent to permanently cease and desist from violating the Securities Act,
6 pursuant to A.R.S. § 44-2032;
- 7 2. Order Respondent to take affirmative action to correct the conditions resulting from
8 Respondent's acts, practices, or transactions, including a requirement to make restitution pursuant to
9 A.R.S. §44-2032;
- 10 3. Order Respondent to pay the state of Arizona administrative penalties of up to five
11 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
- 12 4. Order that the marital community of Respondent and Respondent Spouse are subject
13 to any order of restitution, rescission, administrative penalties, or other appropriate affirmative
14 action pursuant to A.R.S. § 25-215; and
- 15 5. Order any other relief that the Commission deems appropriate.

16 **IX.**

17 **HEARING OPPORTUNITY**

18 Each respondent, including Respondent Spouse, may request a hearing pursuant to A.R.S.
19 § 44-1972 and A.A.C. Rule 14-4-307. **If Respondent or Respondent Spouse requests a hearing,**
20 **the requesting respondent must also answer this Temporary Order and Notice.** A request for
21 hearing must be in writing and received by the Commission within 20 days after service of this
22 Temporary Order and Notice. The requesting respondent must deliver or mail the request for
23 hearing to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix,
24 Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477
25 or on the Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

1 If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10
2 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,
3 or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary**
4 **Order shall remain effective from the date a hearing is requested until a decision is entered.**
5 After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order,
6 with written findings of fact and conclusions of law. A permanent Order may include ordering
7 restitution, assessing administrative penalties, or other action.

8 If a request for hearing is not timely made, the Division will request that the Commission
9 make permanent this Temporary Order, with written findings of fact and conclusions of law, which
10 may include ordering restitution, assessing administrative penalties, or other relief.

11 Persons with a disability may request a reasonable accommodation such as a sign language
12 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,
13 ADA Coordinator, voice phone number 602/542-3931, e-mail lhogan@azcc.gov. Requests should
14 be made as early as possible to allow time to arrange the accommodation.

15 **X.**

16 **ANSWER REQUIREMENT**

17 Pursuant to A.A.C. R14-4-305, if Respondent or Respondent Spouse requests a hearing, the
18 requesting respondent must deliver or mail an Answer to this Temporary Order and Notice to
19 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
20 85007, within 30 calendar days after the date of service of this Temporary Order and Notice.
21 Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
22 Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

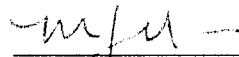
23 Additionally, the answering respondent must serve the Answer upon the Division.
24 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
25 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
26 Arizona, 85007, addressed to Aikaterine Vervilos.

1 The Answer shall contain an admission or denial of each allegation in this Temporary
2 Order and Notice and the original signature of the answering respondent or the respondent's
3 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial
4 of an allegation. An allegation not denied shall be considered admitted.

5 When the answering respondent intends in good faith to deny only a part or a qualification
6 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
7 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

8 The officer presiding over the hearing may grant relief from the requirement to file an
9 Answer for good cause shown.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 12 day of
11 September, 2008.

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14 Matthew J. Neubert
15 Director of Securities
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